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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,284	12/09/2003	Markus Nesper	HOE-790	4912

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EXAMINER
SHAFFER, RICHARD R

ART UNIT	PAPER NUMBER
3775	

MAIL DATE	DELIVERY MODE
12/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/731,284	NESPER ET AL.	
	Examiner	Art Unit	
	Richard Shaffer	3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 September 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,5-18,22 and 24-33* is/are pending in the application.

4a) Of the above claim(s) *25,26 and 29-33* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,5-18,22,24,27 and 28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, 5-18, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerch et al (DE 199 52 359 C1) in view of Lerch (US Patent 6,068,631).

Lerch et al ('359) disclose an implant (**Figures 1-3**) comprising: an inner abutment element (**18/38/64**); an outer abutment plate (**20/52/66**); a bendable/flexible tension band (**28**) fixable on the outer abutment element as well as fastened to the inner abutment element; the band passes through a first rounded opening (**24a**) located in the inner abutment member, bends around to pass through a second rounded opening (**24b**) also located in the inner abutment member spaced from the first opening causing two portions of the tension band to be parallel to one another (**especially Figures 1 and 2**); the outer abutment member has one or more openings (**32a and 32b/60a and 60b/70**) for allowing the tension band to pass through; the outer abutment openings have rounded deflection edges; the tension band is hookable relative to the outer abutment member along with the outer abutment member including hook elements (**54/72**) with an inclined/steep flank; a dimension of the tension band is greater than another (thereby covering the width is greater than the height); and a dimension of the

tension band is in the region between 25% and 75% of a dimension of an abutment element (any type of measurement from an abutment element can suffice, such as openings, spacing between specific features, or any arbitrary locations due to the non-limiting language). In regard to the limitation of the tension band being fixable by penetration of the hook elements (**54,72**), the clamping action of the wedge in order to firmly hold the thread (tension band **28**) would at least cause a surface roughness of the wedge to partially penetrate the thread to prevent sliding. Further, the band is fixable should one also decide to form notches in the thread (or wire embodiment) to which the clamp would engage.

Lerch et al ('359) disclose all of the claimed limitations except for the spacing of the openings of the inner abutment plate being less than an eight of a width dimension of the inner abutment element as well as hook elements disposed on the outer abutment element capable of penetrating through the tension band.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the distance between the holes in the bottom plate as a matter of substitution of providing openings to receive a flexible member with predictable results.

Lerch ('631) teaches hook members (223) disposed on the outer abutment element to grip bone in-between the inner and outer abutment elements. It would have been obvious to one having ordinary skill in the art at the time of invention to include the hook members as taught by Lerch ('631) to the device of Lerch et al ('359) in order to help grip the bone to which the elements are attached. The hook elements are

inherently capable of penetrating through the flexible member of Lerch et al ('359) should one desire.

Claims 1, 3, 5-18, 22, 24, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerch et al (DE 199 52 359 C1) in view Golds et al (US Patent 5,356,412).

Lerch et al ('359) disclose all of the claimed limitations as discussed previously except for hook elements able to penetrate through the tension band with the hook elements orientated transverse of the spacing between the inner and outer abutment elements. Golds et al teach (Figures 4 and 5) a mechanism to gripping a tension band to prevent additional movement of the band in which it is located in the central opening of a device. It would have been obvious to one having ordinary skill in the art to substitute the means for gripping the flexible band in the device of Lerch et al ('359) with a hook element as taught by Golds et al to provide for a means of locking a tension band with predictable results. The hook element of Golds et al is inherently capable of penetrating through the flexible member should one desire.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Shaffer whose telephone number is (571)272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard Shaffer/
Examiner, Art Unit 3775
/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733